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Before the
Federal Communications Commission
Washington, D.C.

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
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)
Amendment of the Commission's)
Regulatory Policies to Allow)
Non-U.S. Licensed Space Stations)
to Provide Domestic and International)
Satellite Service in the U.S.)
)
and)
)
)
Amendment of Section 25.131 of the)
Commission's Rules and Regulations to)
Eliminate the Licensing Requirement for)
Certain International Receive-Only)
Earth Stations)
)
and)
)
)
COMMUNICATIONS SATELLITE)
CORPORATION)
)
Request for Waiver of Section)
25.131(j)(1) of the Commission's Rules)
As It Applies to Services Provided)
via the Intelsat K Satellite)

IB Docket No. 96-111

CC Docket No. 93-23
RM-7931

File No. ISP-92-007

COMMENTS

WorldCom, Inc. ("WorldCom") hereby files its comments in response to the Notice of Proposed Rulemaking, FCC 96-210, released May 14, 1996 ("Notice" or "NPRM") in the above-captioned proceedings. In its Notice, the Commission proposes to formalize its policy and rules for authorizing U.S. earth station operators to provide communications services via non-U.S. licensed satellite systems. Specifically, the Commission proposes to apply an "effective competitive opportunities" analysis to the use of non-U.S. satellites (the "ECO-Sat" test).

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Background

WorldCom, one of the largest long distance telecommunications companies in the United States, offers domestic and international voice and data services to business and residential customers, and to other carriers. WorldCom provides these services using its domestic digital fiber optic network, international undersea cable facilities, and both U.S. and non-U.S. satellite systems, including Intelsat and Intersputnik.¹ WorldCom was a pioneer in the use of non-U.S. satellites, first applying to use Russian satellites as early as 1988.² WorldCom uses Russian and other non-U.S. satellites mainly to serve routes which are underserved or unserved by U.S. satellites, and underserved by Intelsat satellites. Often, the use of non-U.S. satellites allows WorldCom to provide one-hop service from the U.S. to remote African countries, such as Mali and Guinea Bissau,³ and/or to provide service to less developed countries by making use of existing earth stations in those countries that communicate with non-U.S., non-Intelsat satellites.

Summary

WorldCom supports, in principle, the application of an ECO-Sat test to the use of non-U.S. satellites, but disagrees with certain proposals made by the Commission to implement that test. WorldCom urges the Commission to modify its proposals as set forth in these Comments.

WorldCom agrees with the Commission that the proposed rules should not be applied to existing authorizations or to applications filed before adoption of the Notice. WorldCom submits that applications filed after adoption of the Notice, but before adoption of the new rules, should not

¹ WorldCom's comments apply only to fixed satellite services ("FSS"). WorldCom does not provide mobile satellite services ("MSS") or direct-to-home satellite services ("DTH"), and, therefore, WorldCom's comments are not intended to apply to issues related to MSS or DTH.

² See Special Temporary Authority to Provide Television Service Between New York and Moscow via the Intersputnik Statsionar 4 Satellite, TAO-1480, granted December 2, 1988.

³ WorldCom was authorized to serve these countries via Statsionar 11 in File No. ITC-93-075.

be subject to the new rules, either. If, however, the Commission is inclined to subject such newly-filed applications to the new rules, WorldCom urges the Commission to implement certain interim steps to ensure that important new services are not unduly delayed pending adoption of any new rules. WorldCom supports the Commission's suggestions that route markets be evaluated based on traffic thresholds and that a distinction be made between domestic and international services when applying the ECO-Sat test. WorldCom opposes the proposals which would place the burden on earth station applicants to show that no de jure barriers to the use of U.S. satellites exist in countries they wish to serve via non-U.S. satellites and which would require earth station operators to include technical, legal, and financial showings in their Title III applications. These proposals would impose extensive and unnecessary burdens on U.S. earth station operators. WorldCom supports the Commission's proposal that the burden of showing that de facto barriers exist be placed on parties opposing an application. Finally, WorldCom urges the Commission to issue a second NPRM before adopting the proposals in the Notice.

Discussion

A. The ECO-Sat Test Should Only Be Applied To Applications Filed After Adoption Of Any New Rules

The Commission proposes to apply any new rules it adopts to applications filed after the adoption of the NPRM, but not to existing authorizations, or to applications filed before the adoption of the NPRM. WorldCom strongly supports the Commission's proposal that the ECO-Sat test should not be applied to existing licenses or to applications which were filed before the date of the Notice. Earth station operators, including WorldCom, have made substantial capital investments on the basis of the existing rules. Retroactive application of new rules to existing authorizations would be grossly unfair. Further, the application of new rules to existing licenses could cause serious service disruptions, as operators might have to terminate well-established services. Applying

the rules to applications filed prior to the date of the Notice would likewise be unfair, and would cause an enormous delay in the grant of these applications.

WorldCom opposes the Commission's proposal to apply the new rules to applications filed after adoption of the Notice. The Commission should not delay the grant of new applications until the new rules are adopted, pending applications are amended to conform to the new rules, and third parties are given the opportunity to comment on the amended applications. Operators must be permitted to meet new service requirements without the tremendous delay inherent in the Commission's proposal.

If the Commission is inclined to subject applications filed after adoption of the Notice to the new rules, it is imperative that the Commission implement interim measures to ensure that operators can provide important new services pending adoption of the new rules.⁴ Specifically, WorldCom suggests that the Commission grant special temporary authorizations ("STAs") to newly-filed applications that comply with the existing rules. The grant of an STA would be without prejudice to Commission action on the underlying application. Upon the effective date of any new rules, applicants should be given 90 days to amend their applications. The Commission would then process the amended applications according to the new rules. Operators would be authorized to continue to provide service pursuant to STAs until (i) the Commission granted the application, or (ii) the Commission denied the application, at which point the operator should be given 60 days to terminate service. By granting STAs and allowing service to continue until the ultimate disposition of the application, the Commission would not delay or prevent the provision of critical new

⁴ WorldCom urges the Commission to issue expeditiously a Public Notice announcing the implementation of interim processing guidelines in order to avoid delay in processing applications filed after the adoption of the Notice. The Commission cannot, of course, wait until the adoption of final rules to implement these interim processing guidelines, since such interim measures would then be irrelevant.

services. Nonetheless, applicants would be on notice that they are providing the service at their own risk.

B. The Route Market Analysis Portion Of The ECO-Sat Test Should Be Based On A Specified Threshold Of Economic Significance Based On Traffic Volume

The Commission proposes to evaluate the effective competitive opportunities for U.S. satellites in both the "home market" and some or all of the "route markets" of each non-U.S. satellite. NPRM at para. 18. The Commission proposes that the home market be that country which has completed the ITU coordination process for the non-U.S. satellite. The route markets would be the countries that the U.S. earth station operator seeks to serve via non-U.S. satellites. The Commission makes several proposals for methods of determining which route markets to analyze. One of these is to analyze "all route markets that exceed a specified threshold of economic significance, based on traffic volume or population or some other criterion." NPRM at para. 30.

WorldCom supports the Commission's suggestion that the ECO-Sat test be applied only to those route markets which exceed a specified threshold of economic significance based on traffic volume. The Commission should not apply the ECO-Sat test to route markets which fall below the threshold. WorldCom proposes that for FSS the ECO-Sat test not be applied to route markets below the top 50 countries as measured by International Message Telephone Service ("IMTS") traffic. These statistics are readily available in the Commission's annual international traffic reports. The 50 largest markets in the world generate over 90 percent of total IMTS traffic. See In the Matter of Motion of AT&T Corp. to be Declared Non-Dominant for International Service, FCC 96-209, released May 14, 1996, at para 37. By establishing such a traffic threshold, earth station operators would be able to use non-U.S. satellites for fixed satellite services on thin routes to countries of little overall economic significance without undue burden or delay. The Commission states, in paragraph 70 of the NPRM, that "[t]here are still many nations in the world that are connected to

the United States only by satellite, and any policy that makes it more difficult to reach these points over Intelsat would unduly constrain the already limited service to these points." This policy should apply to all satellites, not just Intelsat satellites, which serve countries with low traffic levels.⁵ The traffic threshold method of applying the ECO-Sat test would ensure that service to countries with little economic significance is not "unduly constrained."

C. The Commission Should Adopt A Service-by-Service Approach To The ECO-Sat Test That Distinguishes Between Domestic And International Services

WorldCom strongly supports a service-by-service approach to the ECO-Sat test (as applied to FSS) that distinguishes between international and domestic service.⁶ Although the Commission no longer makes this distinction with respect to U.S. satellite operators, this is not true of many foreign administrations. Foreign countries might open their markets for international services before they open their domestic markets. Where this is the case, U.S. earth station operators should be permitted to provide international service using non-U.S. satellites. At the same time, it would be appropriate to prohibit the non-U.S. satellite from providing U.S. domestic service until its home market is open for domestic services provided by U.S. satellites. This distinction addresses the Commission's concerns about potential market distortion, because it compares like services and allows a particular type of service to be provided in the U.S. by a non-U.S. satellite operator only when the same service can be provided by a U.S. satellite operator in the home country and/or route markets of the non-U.S. satellite.

⁵ In light of the U.S. government's on-going reassessment of the role of Intelsat, the dominant inter-governmental satellite organization, and efforts to introduce effective competition to Intelsat, the Commission should not unduly hamper the opportunity of earth station operators to use non-U.S., non-Intelsat satellites.

⁶ The Commission stated in Paragraph 35 of the Notice that it does not propose a "rigid distinction" between international and domestic service.

D. The FCC Should Not Place The Burden Of Proof On U.S. Earth Station Applicants To Demonstrate That No De Jure Barriers To The Use Of U.S. Satellites Exist In Foreign Countries

The FCC proposes to require earth station applicants seeking to send or receive transmissions to, from or within the U.S. via non-U.S. satellites to bear the burden of demonstrating in their Title III applications that the home country and the relevant route market countries do not maintain de jure barriers to entry by U.S. satellite systems for the particular service the earth station operator seeks to provide. NPRM at para. 39. At the same time, the FCC proposes to place the burden of proof on opponents of the Title III application to demonstrate that the home country or the relevant route market countries maintain de facto entry barriers to U.S. satellite systems. NPRM at para. 42.

WorldCom urges the Commission to place the burden of proof on opponents with regard to both de jure and de facto entry barriers. Earth station operators are often small companies, without the resources to make extensive showings regarding the laws of foreign countries. Further, there may be little or no information available regarding the laws of certain countries, particularly developing nations, in which case it would be difficult to meet the burden of proof.⁷ Even for larger earth station operators, the requirement to demonstrate that the laws of the home market and the various route markets all affirmatively allow U.S. satellite systems to provide domestic and/or international service constitutes an overwhelming burden that will inevitably delay and/or discourage the use of non-U.S. satellites. In the provision of FSS, the end result will be heightened reliance on

⁷ WorldCom's concern in this regard would be mitigated if the Commission adopts WorldCom's proposals to implement a traffic threshold below which the ECO-Sat test will not apply. See supra pp. 5 - 6.

Intelsat, the dominant services provider, and not increased use of U.S. satellite systems, which do not serve many of the relevant routes.⁸

WorldCom also asks that the Commission clarify that U.S. earth station operators will be authorized to use non-U.S. satellites even if one (or more) U.S. satellite system(s) has not yet been authorized to serve the home country or the route market, so long as no de jure or de facto barriers to such service are in place. It is quite possible that a U.S. satellite system may not be authorized to serve a foreign market because it has not yet met the reasonable application or qualification requirements of that foreign market. If the FCC is to impose requirements on the use of non-U.S. satellites, it is only reasonable to expect foreign countries to impose requirements on the use of U.S. satellites. Where one or more U.S. satellite operators have already been authorized to serve the foreign market in question, the Commission should be especially careful in examining allegations by a U.S. satellite operator that it faces de facto entry barriers.

E. The FCC Should Not Require U.S. Earth Station Operators To Show That Non-U.S. Satellites Meet Financial, Technical, Or Legal Requirements

The FCC proposes to require earth station operators to demonstrate in their Title III applications that the non-U.S. satellite meets the Commission's technical, financial and legal requirements for the relevant service. NPRM at para. 61. WorldCom opposes these proposals as applied to FSS because the Commission is, in effect, imposing directly upon U.S. earth station applicants, and indirectly on non-U.S. satellite systems, the Part 25 U.S. satellite licensing

⁸ Although the Commission proposes to require U.S. satellite operators to report the countries where they are permitted to provide service (NPRM at para. 39), under the FCC's proposal earth station applicants would still be required to show that no de jure barriers exist where U.S. satellite operators do not yet provide service. However, U.S. satellite operators might not be providing service to certain countries not because of entry barriers, but rather because of lack of demand, inadequate footprints, or lack of capacity. At a minimum, U.S. earth station applicants should be able to use the satellites of, or serve, the countries reported to the FCC by U.S. satellite operators without any further showing regarding de jure barriers.

requirements. These proposals are unnecessary, and complying with them would be extremely burdensome for earth station operators, many of which are relatively small companies.

First, WorldCom submits that the submission of financial information regarding the non-U.S. satellite operator is unduly burdensome and unnecessary. In proposed Section 25.137, the Commission correctly recognizes that such financial information is not necessary if the satellite is already in orbit. WorldCom sees no reason that satellites which have not yet been launched should be treated differently than those that have. WorldCom notes that financial information on a non-U.S. satellite may be difficult to obtain. For these reasons, WorldCom proposes that financial information not be required, regardless of whether the foreign satellite has or has not been launched.

Second, WorldCom submits that U.S. earth station applicants should not be required to demonstrate the technical qualifications of non-U.S. fixed satellite service satellites. This information is already on file with the ITU and Intelsat. Consequently, any such requirement would be duplicative and unduly burdensome for the earth station operator. In those situations where interference is a potential problem, WorldCom proposes that the burden be placed on U.S. satellite operators to show that the foreign satellite does not comply with interference-related technical requirements. The U.S. satellite operators have the technical expertise and resources to make such a showing, if necessary.

In order to assure that U.S. earth station operators do not create unacceptable interference by using non-U.S. satellites, the FCC proposes, in part, to (i) impose size requirements on U.S. earth stations communicating with foreign space stations, and (ii) prohibit U.S. earth stations from accepting non-U.S. space station transmissions which are above the approved power levels. NPRM at para. 56. WorldCom does not oppose these requirements because they are within the earth station operator's control and any necessary changes can be made.

F. The Commission Should Issue A Further NPRM Before Adopting New Rules

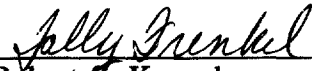
This Notice raises many issues and suggests many alternatives for addressing these issues. Many of the proposals made by the Commission are vague and cannot be fully analyzed until public comments have been filed and reviewed. WorldCom proposes that the Commission issue a second NPRM which narrows the issues and more clearly defines the proposed rules before adopting a new set of rules regarding non-U.S. satellite systems.

Conclusion

WHEREFORE, WorldCom supports in principle the Commission's proposal to apply an ECO-Sat test to the use of non-U.S. satellites, but urges the Commission to modify its proposals as set forth in WorldCom's Comments. As modified, WorldCom would support the adoption of new rules implementing the ECO-Sat test.

Respectfully submitted,

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July 15, 1996

CERTIFICATE OF SERVICE

I, Susanne Deljoubar, hereby certify that I have this 15th day of July, 1996, sent a copy of the foregoing "Comments" by first-class, U.S. mail, postage prepaid to the following:

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